IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

CHRISTOPHER ZIMMERMAN, COREY MIZELL, STEPHANIE DAWSON, and MIKE LEWIS, individually and on behalf of all others similarly situated;

Plaintiffs,

v.

SONYA LAZAREVIC; ZORAN LAZEREVIC, SYLVIA DUDA; COGO'S CO.; AND BRIAN HAENZE d/b/a AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. GD-18-012068

BRIEF IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CLASS CERTIFICATION, AND FOR AUTHORIZATION OF CLASS NOTICE

CHRISTOPHER GRABOVSKI, individually and on behalf of all others similarly situated;

Plaintiff,

v.

REALTY INCOME CORPORATION; COGO'S CO; AND BRIAN HAENZE D/B/A AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. GD-18-012294

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

Kelly K. Iverson
(Pa. ID No. 307175)
Elizabeth Pollock Avery
(Pa. ID No. 314841)
Patrick D. Donathen
(Pa. ID No. 330416)
LYNCH CARPENTER LLP
1133 Penn Ave., 5th Floor
Pittsburgh PA, 15222
P: 412.322.9243
Kelly@lcllp.com
Elizabeth@lcllp.com
Patrick@lcllp.com

[additional counsel in signature block]

IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA

CHRISTOPHER ZIMMERMAN, COREY MIZELL, STEPHANIE DAWSON, and MIKE LEWIS, individually and on behalf of all others similarly situated; Plaintiffs, v. SONYA LAZAREVIC; ZORAN LAZEREVIC, SYLVIA DUDA; COGO'S CO.; AND BRIAN HAENZE d/b/a AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION, Defendants.	CIVIL DIVISION – CLASS ACTION No. GD-18-012068
CHRISTOPHER GRABOVSKI, individually and on behalf of all others similarly situated; Plaintiff, v. REALTY INCOME CORPORATION; COGO'S CO; AND BRIAN HAENZE D/B/A AUTO GALLERY & ACCESSORIES and as TAG TOWING AND COLLISION, Defendants.	CIVIL DIVISION – CLASS ACTION No. GD-18-012294

BRIEF IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CLASS CERTIFICATION, AND FOR AUTHORIZATION OF CLASS NOTICE

Plaintiffs Christopher Zimmerman, Corey Mizell, Stephanie Dawson, Mike Lewis, and Christopher Grabovski (collectively, "Plaintiffs" or "Settlement Class Representatives") respectfully submit this brief in support of their Unopposed Motion for Preliminary Approval of Class Action Settlement, Conditional Class Certification, and for Authorization of Class Notice,

asking this Court for an order granting preliminary approval of the proposed Class Action Settlement Agreement and Release ("Settlement" or "SA"), conditionally certifying the proposed Settlement Cass for settlement purposes, and authorizing the dissemination of notice to Settlement Class Members.[1]

I. BACKGROUND

A. Factual and Procedural Overview.

Plaintiffs' claims in this putative class action arose out of alleged overcharges for nonconsensual towing services in the City of Pittsburgh, Pennsylvania. It was alleged that from June 18, 2012 through the present, Defendant Cogo's Co. ("CoGo's" or "Defendant") engaged Brian Haenze d/b/a Auto Gallery & Accessories and as Tag Towing and Collision ("TAG Towing") to tow unauthorized vehicles parked in the Parking Lots. It was further alleged, that when conducting nonconsensual tows from the Parking Lot, TAG towing and CoGo'st, charged vehicle owners/operators towing fees above the maximum fee for a nonconsensual tow from a private parking area as then provided by Pittsburgh's City Ordinances, at 5 Pittsburgh Code § 525.02 and § 525.05. (AC ¶¶ 35–36, 41).[2] The Amended Complaints alleged that Plaintiffs and Settlement Class Members all had their vehicle towed or hooked up to one of TAG Towing's tow trucks and those vehicles were held (and not released) until they paid a tow fee greater than the maximum set by the City of Pittsburgh. (AC ¶¶ 42-56). At the time CoGo's engage TAG Towing to conduct these nonconsensual tows, the statutory maximum for a tow fee was between $110 and

[1] The capitalized terms used in Plaintiffs' Brief shall be construed according to their meaning as defined in the Settlement except as may otherwise be indicated.
[2] Citations to "AC" are citations to the Amended Complaint, Doc. 13 & 10 in the respective above-captioned cases.

$135, yet Tag Towing routinely charged approximately $220-$250 per non-consensual tow. (AC ¶¶ 35-36, 42-56).

Plaintiffs initiated these cases against Sonya Lazarevic, Zoran Lazarevic, Sylvia Duda, Realty Income Corporation, and TAG Towing by way of class action complaints on September 18 and September 21, 2018. (Doc. 1 & 1). Plaintiffs the filed the operative Amended Complaints on February 5, 2019, naming CoGo's as an additional Defendant, and alleging violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. §§ 202-1, *et seq.*, the Pennsylvania Fair Credit Extension Uniformity Act ("PaFCEUA"), 73 Pa. Stat. §§ 2270.1, *et seq.*, and various common law causes of action. (Doc. 13 & 10). Defendants then filed Preliminary Objections to the Amended Complaints, which were subsequently fully briefed and argued by the Parties, and later overruled by the Court. (Doc. 16, 20, & 12–14). Following a ruling on the Preliminary Objections, on December 9, 2019, CoGo's answered the Amended Complaints, denying liability as alleged and asserted cross-claims against TAG Towing. (Doc. 21 & 18). On January 15, 2021, the Parties agreed to a voluntary discontinuance as to less than all defendants, following which the Court dismissed the Settlement Class Representatives' claims against Sonya Lazarevic, Zoran Lazarevic, Sylvia Duda, and Realty Income Corporation without prejudice on January 19, 2021. (Doc. 34, 36, 31, & 33).[3]

The Parties then engaged in written and oral discovery, and on March 22, 2021, the Court consolidated seven other related cases for discovery purposes in advance of Settlement Class Members filing their Motion for Class Certification. (Doc. 37 & 34).

[3] Plaintiffs have filed concurrently with this Motion a Joint Motion to dismiss Plaintiffs' claims and CoGo's cross-claims against TAG.

During discovery, the Parties proceeded to engage in a possible resolution of this litigation, ultimately reaching the proposed Settlement.

B. Negotiation of the Proposed Settlement.

During discovery the Parties commenced settlement discussions, and after a series of series of arms'-length negotiations, including multiple offers and counteroffers, the Parties reached an agreement regarding the material terms of a settlement, which, if approved by the Court will resolve all claims that were raised, or could have been raised against CoGo's, relating to non-consensual tows from the Parking Lots. After reaching an agreement on the material terms of a settlement, the Parties continued drafting and finalizing the Settlement and proposed exhibits, reaching a final set of documents, after which the proposed Settlement was subsequently executed by all Parties.

C. The Terms of the Proposed Class Action Settlement Agreement.

1. The Settlement Class Definition.

For settlement purpose only, Plaintiffs propose certification of the following Settlement Class pursuant to Pa. R. Civ. P. 1710 and 1714:

> All owners or operators (whose vehicles of any type – including passenger cars, light trucks, or motorcycles, and scooters) were non-consensually towed from the Parking Lots by Tag Towing within the Relevant Period, and who, as a result were charged and paid a fee in excess of the limits then set by 5 Pittsburgh Code ¶§ 525.05 and otherwise pursuant to Pittsburgh Code.

(SA ¶ 1.39).

2. Settlement Consideration.

Under the Settlement, CoGo's will pay up to a total of $104,000.00 in monetary consideration. (SA ¶ 1.36). CoGo's monetary obligations are as follows:

- A payment of $35,000.00 to establish a Settlement Fund for direct monetary relief to Settlement Class Members, from which the Costs of Settlement Administration

and up to $5,000.00 in Service Awards to the Settlement Class Representatives (to the extent approved by the Court) will also be paid (SA ¶¶ 1.30, 3.1, & 3.3(i)); and

- A payment of up to $69,000.00 for Settlement Class Counsel's attorneys' fees, expenses, and costs, to the extent approved by the Court. (SA ¶ 3.2(i)).

a. Direct Monetary Relief to Settlement Class Members.

CoGo's will pay $35,000.00 into a Settlement Fund within thirty (30) days of the Effective Date. (SA ¶ 3.1(ii)). The Settlement Fund will be used by the Settlement Administrator to pay for the following:

- The Costs of Settlement Administration;
- Service Awards of up to $1,000.00 per Settlement Class Representative, not to exceed a total of $5,000.00, to the extent approved by the Court; and
- Distribution of all money remaining in the Settlement Fund (after the Service Awards and Costs of Settlement Administration are deducted), in equal *pro rata* shares to all Participating Settlement Class Members.

(SA ¶¶ 3.1(iv), 3.3, 3.4).

Claims. Settlement Class Members may submit attested claims for a *pro rata* share of the remaining Settlement Fund (after Service Awards and the Costs of Settlement Administration are deducted) if they were non-consensually towed from the parking lot located at 53 South 10th Street, Pittsburgh, PA 15203 by Brian Haenze d/b/a Auto Gallery & Accessories and as Tag Towing and Collision between June 1, 2017 and November 5, 2018, and, as a result, were charged and paid a fee in excess of the limits then set by Pittsburgh, PA Code of Ordinances §§ 525.05 and 525.02. (SA ¶ 3.5; SA Ex. 1). Settlement Class Members who file Approved Claims will be deemed Participating Settlement Class Members and will receive Settlement Checks. (SA ¶¶ 3.4(i), 1.18,

1.2). The final amount Participating Settlement Class Members' Settlement Checks will depend on numerous variables, including the total number of Approved Claims.

Payment Timing and Provisions for Residual Funds. After the Effective Date the Settlement Administrator will process valid claims of Settlement Class Members' and mail their Settlement Checks. (SA ¶¶ 3.1(v), 3.4). Participating Settlement Class Members receiving a Settlement Check will have the duration of the Check Cashing Period to negotiate their Settlement Checks. (SA ¶ 3.4(vi)). The Parties propose that the Check Cashing Period begin the day the Settlement Administrator issues the Settlement Checks and run for the next one-hundred twenty (120) days. (SA ¶ 1.3). The Settlement Administrator is authorized to reissue an expired, unredeemed, lost, destroyed, or never received Settlement Check upon the request of a Settlement Class Member if said request is made within one-hundred eighty (180) days from the start of the Check Cashing Period. (SA ¶ 3.4(vi)). If unclaimed or uncashed payments remain in the Settlement Fund one-hundred eighty (180) days after the Check Cashing Period begins, the Parties will instruct the Settlement Administrator to disburse fifty percent (50%) of the residual funds to the Pennsylvania Interest on Lawyers Trust Account Board and to disburse the other fifty percent (50%) of the remaining funds to a *cy pres* recipient, 412 Food Rescue. (SA ¶ 3.6).

b. Attorneys' Fees, Costs, and Expenses of Litigation.

Separate from the monetary consideration directly available to Settlement Class Members through the Settlement Fund, CoGo's will also pay up to $69,000.00 in attorneys' fees, costs, and expenses, subject to Court-approval. (SA ¶ 3.2(i)).

Settlement Class Counsel will submit requests for approval of attorneys' fees, costs, and expenses, and Service Awards in advance of the Opt-Out Deadline. CoGo's shall pay the Court-approved attorneys' fees, costs, and expenses within thirty (30) days of the Effective Date and the

Settlement Administrator shall pay the Court-approved Service Awards from the Settlement Fund within thirty (30) days of the effective date. (SA ¶¶ 3.3(i)).

c. Injunctive Relief.

Under the Settlement, CoGo's agrees that if it intends to, or permits towing form the Parking Lots, it will post in the Parking Lots signage advising to potential parkers that they may be towed if they are not patronizing the specific business at the address on which the Parking Lots are located and advising that the tow fee charged will be subject to the amount permitted by 5 Pittsburgh Code §§ 525.05. (SA ¶ 3.7).

d. Releases.

In exchange for the consideration provided by CoGo's under the Settlement, the Settlement Class Representatives and their related parties/or entities shall be deemed to forever release, covenant not to sue, acquit, discharge, and waive in favor of the Releasees, any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, liquidated or unliquidated, whether filed or prosecuted, whether now existing or which may have ever hereinafter arise or be ascertained, which either may have or claim to have against CoGo's and/or any of the Releasees which occurred on or before the date of the Final Approval Order and Judgment. The Release contained in this paragraph expressly, and without limitation, applies to all Releasees and includes all claims relating to compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the UTPCPL, 73 P.S. §§ 201-1 *et seq.*, the PaFCEUA, 73 P.S. 2270.1, *et. seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort arising

or accruing during the Relevant Period, that they have or may have, whether known or unknown, against the Releasees. (SA ¶¶ 4.1 & 1.31).

Likewise, Participating Settlement Class Members and their related parties/or entities, in exchange for the consideration provided by CoGo's under the Settlement, shall be deemed to forever release, covenant not to sue, acquit, discharge and waive in favor of the Releasees, any and all claims, causes of action, demands, complaints, grievances, damages, debts, suits, proceedings, judgments, liens, liabilities, obligations, dues, sums of money, actions and causes of action, known or unknown, accrued or unaccrued, of any nature whatsoever, whether in law, statutory or in equity, liquidated or unliquidated, whether filed or prosecuted, whether now or existing or which may ever hereinafter arise or be ascertained, which, which the Participating Settlement Class Members may have or claim to have against CoGo's and/or any of the Releasees which occurred on or before the date of the Final Approval Order and Judgment relating to alleged violations of Pittsburgh Code and/or permitting, signage/insignias and/or money charged, for twos made by Tag Towing from the Parking Lots. The Release contained in this paragraph applies expressly, without limitation, to all Releasees and includes all claims relating to compensation, fees/costs, liquidated damages, penalties, interest, and all other relief under the UTPCPL, 73 P.S. §§ 201-1 *et seq.*, the PaFCEUA, 73 P.S. 2270.1, *et. seq.*, and all other state and local consumer protection or fair credit laws and common law theories in contract or tort arising or accruing during the Relevant Period, that they have or may have, whether known or unknown, against the Releasees that arose out of, or in connection with the Pittsburgh Code, permitting, signage/insignias and/or money charged for tows made by Tag Towing from the Parking Lots. (SA ¶¶ 4.3 & 1.19).

The Parties further agree that by entering this Settlement, CoGo's does not release any rights to pursue TAG Towing for a claim of indemnification or contribution related to this

Settlement. (SA ¶ 4.5). However, CoGo's shall not pursue TAG Towing for such a claim until after it has paid the Total Settlement Consideration pursuant to the Settlement. (*Id.*).

3. The Proposed Notice and Claims Program.

Notice Program. Subject to the Court's approval, the Parties propose a combination of property posting and publication notice to provide Settlement Class Members with notice of the Settlement and their rights through it. (SA ¶ 2.4). The Parties propose a notice program consisting of publication and property posting notice in light of the fact that while TAG Towing frequently conducted non-consensual tows from the Parking Lots during the Relevant Period, CoGo's did not maintain records of individuals towed by TAG Towing from the Parking Lots and any records maintained by TAG Towing were otherwise lost and/or destroyed during the pendency of this litigation (despite TAG Towing having an obligation to preserve such records).

Specifically, the Parties propose that within thirty (30) days of preliminary approval, the Parties and the Settlement Administrator will notify potential Settlement Class Members of the Settlement by the following. A notice consistent with Exhibit 6 shall be posted at the Parking Lots for the duration of the Claims Period. (SA ¶ 2.4(ii); SA Ex. 6). In addition to property posting, the Parties propose that Settlement Notice in the form attached to the Settlement as Exhibit 5 be published in the Pittsburgh Post-Gazette and the Pittsburgh City Paper and remain published in each for no less than seven consecutive days. (SA ¶ 2.4(i)(b); SA Ex. 5). The Settlement Administrator will also create a Settlement Website that contains copies of the detailed Settlement Notice attached to the Settlement as Exhibit 4 and other relevant case documents and information. (SA ¶ 2.4(i)(a); SA Ex. 4).

The proposed Settlement Notice includes a description of the material terms of the Settlement and the forms of relief available to Settlement Class Members; a date by which

Settlement Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members can submit a Claim Form and access the Settlement Agreement and other related documents and information. (*See* SA Ex. 1, 4, 5, & 6).

Further, the Settlement Notices advise Settlement Class Members of their rights to exclude themselves or object to the Settlement and provide the deadline to do so, which the Parties propose will be sixty (60) days from the Notice Date. (SA ¶¶ 2.5, 2.6, 1.15, & 1.16). The Settlement Notice explains the full procedures for Settlement Class Members to exclude themselves or to object to any aspect of the Settlement. (*See* SA Ex. 4).

The Claim Form (SA Ex. 1) clearly informs the Settlement Class Members of the process they must follow to submit a claim for their *pro rata* share of the Settlement Fund. It is only two pages long and provides Settlement Class Members with a straightforward explanation to ascertain whether they are eligible to submit a claim, along with instructions for Settlement Class Members to provide the information required to submit a valid claim. A substantially similar form will appear on the Settlement Website for purposes of electronically submitting claims.

The Parties propose a sixty (60) day Claims Period following the Notice Date (defined as the date by which the Settlement Administrator is required to effectuate notice, which shall be thirty (30) days after the Court enters the Preliminary Approval Order). (SA ¶ 1.4).

Claims Program. Finally, payments to Settlement Class Members who submit timely and valid Approved Claims will be made pursuant to the following formula. After the Service Awards and Costs of Settlement Administration are deducted from the Settlement Fund, the remaining monies in the Settlement Fund will be distributed to all Participating Settlement Class Members on a *pro rata* basis. (SA ¶ 3.4(ii)).

II. ARGUMENT

A. The Requirements for a Class Action are Satisfied, and the Court Should Conditionally Certify the Settlement Class for Settlement Purposes.

Under Pennsylvania's rules of civil procedure, the proponent of class certification must demonstrate that the prerequisites under Rule 1702 are met. Pa. R. Civ. P. 1702; *see also Samuel-Bassett v. Kia Motors America, Inc.*, 34 A.3d 1, 16 (Pa. 2011). The prerequisites to certifying a class action are set forth in Pennsylvania Rules of Civil Procedure 1702: numerosity, commonality, typicality, adequacy of representation, and fairness and efficiency. Pa. R. Civ. P. 1702; *see also Kelly v. Cty. of Allegheny*, 546 A.2d 608, 610 (Pa. 1988). Additionally, Rules 1708 and 1709 specify the factors considered in determining the last two requirements of Rule 1702 (adequacy of representation and fairness and efficiency). *Id.* The Court may conditionally certify a class pending a final order on the merits. Pa. R. Civ. P. 1710(d).

In deciding whether to certify a class action, the court is vested with broad discretion. *Cambanis v. Nationwide Ins. Co.*, 501 A.2d 635 (Pa. Super. Ct. 1985) ("Pennsylvania Rules of Civil Procedure . . . grant the court extensive powers to manage the class action."). Decisions in favor of maintaining a class action should be liberally made. *D'Amelio v. Blue Cross of Lehigh Valley*, 500 A.2d 1137, 1141 (Pa. Super. Ct. 1985). As explained below, Plaintiffs satisfy Rule 1702, and this Court should conditionally certify this class action for settlement purposes.

1. The Class is so Numerous that Joinder of all Members is Impracticable.

Rule 1702(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Pa. R. Civ. P. 1702(1). While there is no specific minimum number needed for a class to be certified, there is a general presumption that numerosity is satisfied where the potential number of plaintiffs exceeds 40. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012). Ultimately, whether a class is sufficiently numerous is based on the circumstances

surrounding each individual case. *Janicik v. Prudential Ins. Co. of Am.*, 451 A.2d 451, 456 (Pa. Super. Ct. 1982). And the Court should inquire "whether the number of potential individual plaintiffs would pose a grave imposition on the resources of the Court and an unnecessary drain on the energies and resources of the litigants should such potential plaintiffs sue individually." *Temple Univ. v. Pa. Dept. of Public Welfare*, 374 A.2d 911, 996 (Pa. Commw. Ct. 1977).

Here, the Settlement Class is sufficiently numerous. Discovery revealed that TAG Towing frequently conducted non-consensual tows from the Parking Lots during the Relevant Period. Thus, the proposed Settlement Class consists of more members than would be practicable to join.

2. There are Questions of Law or Fact Common to the Settlement Class.

Rule 1702(2) requires common questions of law and fact to exist. Where the "class members' legal grievances arise out of the same practice or course of conduct" undertaken by the defendants, Rule 1702(2) is satisfied. *Janicik*, 451 A.2d at 456; *see also Liss & Marion, P.C. v. Recordex Acquisition Corp.*, 983 A.2d 652, 664 (Pa. 2009) (finding commonality where a claim alleged that a company charged more for records than permitted under the Medical Records Act). Numerous other fee overcharge cases, similar to this one, have had classes certified by this Court. *See Patterson v. Fid. Nat. Title Ins. Co.*, No. GD-03-021176 (Pa. Com. Pl. Ct. Dec. 29, 2015) (Wettick, J.) (Doc. 178); *Farneth v. Wal-mart Stores, Inc.*, No. GD-13-011472 (Pa. Com. Pl. Ct. Mar. 21, 2017) (Colville, J.) (Doc. 52); *Toth v. Nw. Sav. Bank*, No. GD-12-008014, 2013 WL 8538695, at *4 (Pa. Com. Pl. Ct. Mar. 1, 2013) (Wettick, J.).

Here, the proposed Settlement Class meets the commonality standard because the Settlement Class is limited to those individuals who allegedly had their vehicle non-consensually towed from the Parking Lots and were charged more that the statutory maximum fee then set by the Pittsburgh City Ordinance for the return of their vehicle. As such, Plaintiffs' and Settlement

Class Members' alleged injuries all stem from the same allegedly unlawful conduct by CoGo's. These factual commonalities give rise to common legal issues such as whether CoGo's was allegedly a creditor and/or debt collector under the PaFCEUA; whether CoGo's allegedly employed TAG Towing to non-consensually tow Plaintiffs' and the Settlement Class Members' vehicles; whether the state legislature granted CoGo's a lien against Plaintiffs and Settlement Class Members for the towing cost; and whether TAG Towing allegedly charged fees and collected sums of money from Settlement Class Members in excess of those provided by 5 Pittsburgh Code § 525.02 while engaged by CoGo's to conduct non-consensual tows from the Parking Lots. For these reasons, Rule 1702(2)'s commonality requirement is satisfied.

3. The Claims of the Representative Plaintiffs are Typical of the Claims of the Settlement Class.

Rule 1702(3) requires that the "claims or defenses of the representative parties are typical of the claims or defenses of the class." Pa. R. Civ. P. 1702(3). This requirement is intended to ensure that "the class representative's overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members." *Samuel-Bassett*, 34 A.3d at 30–31 (quoting *D'Amelio*, 500 A.2d at 1146). The typicality requirement is satisfied where the plaintiffs' and class members' claims arise "out of the same course of conduct and involve the same legal theories." *Samuel-Bassett*, 34 A.3d at 30–31 (citing *Dunn v. Allegheny County Prop. Assessment Appeals & Review,* 794 A.2d 416, 425 (Pa. Commw. Ct. 2002)). This does not mean that the plaintiffs' and class members' claims must be identical; only that the claims are similar enough to determine that the representative party will adequately represent the interests of the class. *Klusman v. Bucks Cty. Court of Common Pleas*, 564 A.2d 526, 531 (Pa. Commw. Ct. 1989), *aff'd*, 574 A.2d 604 (Pa.

1990). A finding that a named plaintiff is atypical must be supported by a clear conflict and be such that the conflict places the Class members' interests in significant jeopardy. *Id.*

Similar to commonality, typicality is established because Plaintiffs' claims arise out of the same practice as the claims of each Settlement Class Member—TAG Towing's and CoGo's alleged overcharging of vehicle owners/operators for tow fees above the maximum fee for a non-consensual tow from the Parking Lots as then provided by Pittsburgh's City Ordinances. Because this case is challenging the same alleged conduct which affects both the named Plaintiffs and the Settlement Class, there are no differences between Plaintiffs' overall position on the claims and those of the Settlement Class Members. Thus, typicality is satisfied.

4. The Representative Plaintiffs Will Fairly and Adequately Represent the Interests of the Settlement Class.

Rule 1702(4) requires that the "representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in Rule 1709." Pa. R. Civ. P. 1702(4). In turn, Rule 1709 lists three requirements:

> (1) whether the attorney for the representative parties will adequately represent the interests of the class,
> (2) whether the representative parties have a conflict of interest in the maintenance of the class action, and
> (3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709. The proposed class meets these requirements.

a. Counsel for Plaintiffs Have Adequately Represented the Interests of the Settlement Class and Will Continue to do so.

Plaintiffs here have retained competent counsel experienced in consumer class action litigation. Unless proven otherwise, courts will generally assume that members of the bar are adequately skilled in the legal profession. *Janicik*, 451 A.2d at 458. "Courts may also infer the attorney's adequacy from the pleadings, briefs, and other material presented to the court, or may

determine these warrant further inquiry." *Id.* at 459. Plaintiffs seek to have Patrick D. Donathen of Lynch Carpenter, LLP,[4] and Joshua P. Ward of J.P. Ward & Associates, LLC,[5] appointed as Settlement Class Counsel. As evidenced by their resumes, Plaintiffs' counsel have the requisite skill and experience to serve as Settlement Class Counsel.

b. There are no Conflicts of Interests Between the Representative Plaintiffs and the Settlement Class.

As with the adequacy of counsel requirement, the Court "may generally presume that no conflict of interest exists unless otherwise demonstrated.'" *Haft v. U.S. Steel Corp.*, 451 A.2d 445, 448 (Pa. Super. Ct. 1982) (quoting *Janicik*, 451 A. 2d at 459). Plaintiffs are not aware of any "hidden collusive circumstances," *Haft*, 451 A.2d at 448, that could pose conflicts of interest between Plaintiffs and members of the Settlement Class. Plaintiffs and the Settlement Class have aligned interests: they were all subject to TAG Towing's and CoGo's alleged uniform overcharging of Settlement Class Members for non-consensual tows from the Parking Lots. If Plaintiffs succeed in obtaining approval of the proposed Settlement, the benefits will inure to Plaintiffs and all Settlement Class Members in a manner calculated to equitably correspond to the amount of monetary harm suffered by each individual.

c. The Interests of Settlement Class Members Have Not Been Harmed by Lack of Adequate Resources.

The requirement that the representative plaintiff demonstrate access to adequate financial resources to ensure that interests of the class are not harmed may be met if "the attorney for the class representatives is ethically advancing costs." *Haft*, 451 A.2d at 448; *see also Janicik*, 451 A.2d at 459–60. That is the case here: Settlement Class Counsel undertook this litigation pursuant

[4] Attorney Donathen's Resume is attached as **Exhibit B.**
[5] Attorney Ward's Resume is attached as **Exhibit C.**

to a standard contingent fee agreement, and up through this point in the litigation, counsel have advanced all costs required to maintain the litigation, such as initial filing fees, brief printing fees, and deposition fees. In connection with the final approval process, Settlement Class Counsel will ethically seek reimbursement of its costs and fees as described in the Parties' Settlement Agreement, and Settlement Class Counsel's application will be filed and available for Settlement Class Members to review prior to the Objection Date, and subject to ultimate approval by the Court.

For these reasons, the requirements of Rule 1702(4) are satisfied.

5. A Class Action is a Fair and Efficient Method of Adjudicating the Controversy.

Rule 1702(5) requires that the court determine whether a class action provides a "fair and efficient method of adjudicating the controversy," with reference to additional factors in Rule 1708. Pa. R. Civ. P. 1702(5). In turn, Rule 1708 lists the following factors for courts to consider:

> In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court shall consider among other matters the criteria set forth in subdivisions (a), (b) and (c).
>
> (a) Where monetary recovery alone is sought, the court shall consider
> (1) whether common questions of law or fact predominate over any question affecting only individual members;
> (2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
> (3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
> (i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;
> (ii) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudication;
> (4) the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues;

> (5) whether the particular forum is appropriate for the litigation of the claims of the entire class;
> (6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions;
> (7) whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.
>
> (b) Where equitable or declaratory relief alone is sought, the court shall consider (1) the criteria set forth in subsections (1) through (5) of subdivision (a), and (2) whether the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making final equitable or declaratory relief appropriate with respect to the class.
>
> (c) Where both monetary and other relief is sought, the court shall consider all the criteria in both subdivisions (a) and (b).

Pa. R. Civ. P. 1708.

a. Common Questions of Fact and Law Predominate.

The predominance inquiry under Rule 1708(a)(1), while "more demanding" than the commonality standard, requires "merely" that the "common questions of fact and law . . . predominate over individual questions." *Samuel-Bassett*, 34 A.3d at 23. "[A] class consisting of members for whom *most* essential elements of its cause or causes of action may be proven through simultaneous class-wide evidence is better suited for class treatment than one consisting of individuals from whom resolution of such elements does not advance the interests of the entire class." *Id.* Where class members can demonstrate they were subjected to the same harm and they identify a "common source of liability," individualized issues such as varying amounts of damages will not preclude class certification. *See id.* at 28 (citations and quotation marks omitted).

As explained above, the key issues in this case shared by Plaintiffs and Settlement Class Members involve TAG Towing's and CoGo's alleged overcharging of vehicle owners/operators for tow fees above the maximum fee for a nonconsensual tow from the Parking Lots as then

provided by Pittsburgh's City Ordinances. Questions relating to TAG Towing's and CoGo's alleged overcharging for tow fees for the return of Plaintiffs' and Settlement Class Members' vehicles would be the primary focus of the continued litigation, and those questions would be resolved with answers uniform to Plaintiffs and the Settlement Class. These legal and factual issues predominate over individualized questions, which would at most involve questions regarding the nature and amount of damages suffered by Plaintiffs and Settlement Class Members stemming from the alleged fee overcharges.

b. The Size of the Class and Manageability of the Case Weigh in Favor of Class Certification.

Rule 1708(a)(2) requires the Court to consider "the size of the class and the difficulties likely to be encountered in the management of the action as a class action." Pa. R. Civ. P. 1708(a)(2). TAG Towing frequently conducted non-consensual Tows from the Parking Lots—and proceeding as a class action here for settlement purposes is fully manageable. Here, the Parties have agreed to a settlement structure and claims process designed to permit the Settlement Administrator to make a straightforward and simple determination of the amount each Settlement Class Member will receive under the Settlement. In these circumstances, there are no potential manageability problems weighing against class certification.

c. Prosecution of Separate Individual Actions Creates a Risk of Inconsistent Rulings.

Rule 1708(a)(3) requires the Court to consider whether prosecution of separate individual actions, as opposed to a class action, would create risks of inconsistent or varying rulings which would confront the defendant with incompatible standards of conduct, and whether adjudications with respect to individual members of the class would as a practical matter be dispositive of the interests of others or impair their ability to protect their interests. Pa. R. Civ. P. 1708(a)(3). Where,

as here, the Plaintiffs and Class Members share an identical claim stemming from the same conduct on the part of the defendant, a class action "affords the speedier and more comprehensive statewide determination of the claim," and is "the better means to ensure recovery if the claim proves meritorious or to spare [defendant] repetitive piecemeal litigation if it does not." *Janicik*, 451 A.2d at 462–63. Indeed, because Plaintiffs sought to establish CoGo's liability under a theory that TAG Towing's and CoGo's alleged uniform tow fee overcharging to discharge CoGo's lien on Plaintiffs' and Settlement Class Members' vehicles impacted all members of the Settlement Class, there is a substantial risk that individual actions would lead to varying outcomes. *Id.* at 462 ("Courts may, and often do, differ in resolving similar questions."). Therefore, this factor weighs in favor of class certification.

d. The Extent and Nature of Litigation by Other Class Members Weighs in Favor of Class Certification, and this Court is an Appropriate Forum.

Rule 1708(a)(4) requires the Court to consider "the extent and nature of any litigation already commenced by or against members of the class involving any of the same issues." Pa. R. Civ. P. 1708(a)(4). This factor weighs in favor of certification because there are no other actions against CoGo's related to its engagement of TAG Towing to conduct non-consensual tows from the Parking Lot, so there is no risk that class certification would impair the rights of other litigants in other actions.

Additionally, this Court is an appropriate forum because this county is where the acts and omissions relevant to the claims took place, and the residence of the named Plaintiffs and likely a substantial number of members of the Settlement Class. As a result, there is "no one common pleas court which would be better to hear the action." *Baldassari*, 808 A.2d at 195 (quoting *Cambanis*, 501 A.3d at 641 n.19).

e. The Amounts at Issue, Complexities of the Issues, and Expenses of Litigation Justify a Class Action Rather Than Individual Actions.

Rule 1708(a)(6) requires the Court to consider whether, in light of the complexity of the issues and expenses of litigation, the separate claims of individual class members are insufficient in amount to support separate actions. Relatedly, Rule 1708(a)(7) requires the Court to consider whether it is likely that the amount which may be recovered by individual class members will be so small in relation to the expense and effort of administering the action as not to justify a class action.

Here, both factors support class certification. Plaintiffs and Settlement Class Members were all allegedly charged over $200 for discharge of the lien and release of the towed vehicle—making the amount of the overcharge for each member of the Settlement Class at least $85. Further, each alleged individual overcharge is relatively modest in size, making it unlikely that the overcharges could be prosecuted or adjudicated economically on an individual basis. As such, were the litigation to continue as individual actions rather than a class action, Settlement Class Members may not have the financial incentive to pursue litigation to vindicate their rights.

Importantly, the Settlement provides a reasonable compromise, that if approved, will accomplish a desirable outcome in one proceeding—those individuals who were subject to CoGo's alleged conduct will be provided an opportunity to submit claims to recover for the alleged overcharges without having to bring their own lawsuit. As a result, the Settlement Class Members will be entitled to compensation if this action is certified, and the Settlement is approved. When weighed against the prospects of individual litigation, the proposed Settlement here offers all the potential advantages of class certification—eliminating the possibility of numerous duplicative claims and redundant work for counsel and the courts—while providing a recovery for a large

group without requiring each individual Settlement Class Member to shoulder the burden of litigation expenses despite potentially small recovery.

For these reasons, the factors described in Rule 1708(a)(6) & (7) both support certification.

B. The Court Should Preliminary Approve the Proposed Settlement.

Plaintiffs request that the Court preliminarily approve the proposed Settlement on the grounds that the proposal falls within the range of reasonableness and that approval on these terms will secure an adequate recovery in exchange for the releases of the claims raised in the action.

The approval of a class action comes in two stages. First, the proposal is submitted to the Court for a preliminary fairness evaluation. *Brophy v. Phila. Gas Works and Phila. Facilities Mgmt. Corp.*, 921 A.3d 80, 88 (Pa. Commw. Ct. 2007). If approval is granted, notice is given to the class members and a formal fairness hearing is scheduled where the Court can receive arguments and evidence in support of or in opposition to the proposal. *Id.* The "range of reasonableness" standard requires the Court to examine whether the proposed settlement secures an "'adequate' (and not necessarily best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank and Trust Co. v. Hess*, 727 A.2d 1076, 1079 (Pa. 1999). Factors relevant to the ultimate approval of the settlement (after the final fairness hearing) include:

1. the risks of establishing liability and damages;
2. the range of reasonableness of the settlement in light of the best possible recovery;
3. the range of reasonableness of the settlement in light of all the attendant risks of litigation;
4. the complexity, expense and likely duration of the litigation;
5. The State of the Proceedings and the Amount of Discovery Completed;
6. the recommendations of competent counsel; and;
7. the reaction of the class to the settlement.

Id. at 1079–80. A preliminary review of these factors demonstrates that the Settlement is within the range of reasonableness and should be approved. As explained above, the Settlement will

obtain monetary benefits for the Settlement Class of $35,000.00 and further provides non-monetary benefits in the form of agreed-upon injunctive relief.

1. The Risks of Establishing Liability and Damages.

"In evaluating the likelihood of success, a court should not attempt to resolve unsettled issues or legal principles but should attempt to estimate the reasonable probability of success." *Dauphin Deposit Bank & Tr. Co. v. Hess*, 698 A.2d 1305, 1309 (Pa. Super. Ct. 1997), *aff'd*, 556 727 A.2d 1076 (Pa. 1999). While Plaintiffs are confident of the strength of their claims, Plaintiffs and Settlement Class Members face significant risks to establishing liability and ultimately recovering. Here, CoGo's has raised reasonable defenses and objections to Plaintiffs' claims that TAG Towing as engaged by CoGo's, overcharged for tow fees, engaged in unfair or deceptive practices, breached a contract, or was otherwise unjustly enriched. Those defenses include but are not limited to: Plaintiffs' damages were caused by TAG Towing's actions or omissions, not CoGo's actions or omissions; TAG Towing was not acting as CoGo's agent when performing non-consensual tows from the Parking Lots; Plaintiffs' claims are barred by comparative or contributory negligence; and Plaintiffs' did not rely on any representations made by CoGo's when they paid monies to TAG Towing for the return of their vehicles. As such, this factor weighs in favor of settlement.

2. The Range of Reasonableness in Light of the Best Possible Recovery and in Light of the Attendant Risks of Litigation.

The next two factors require the court to analyze the range of reasonableness of the settlement. "In deciding whether the settlement falls within a 'range of reasonableness,'" a court needs "to examine whether the proposed settlement secures an 'adequate' (and not necessarily the best possible) advantage for the class in exchange for the surrender of the members' litigation rights." *Dauphin Deposit Bank*, 727 A.2d at 1079. "In this light, a court need not inquire into

whether the 'best possible' recovery has been achieved. Rather, in view of the stage of the proceedings, complexity, expense and likely duration of further litigation, as well as the risks of litigation, the court is to decide whether the settlement is reasonable." *Id.*

As explained above, the Settlement and distribution process is structured so that Settlement Class Members who file an Approved Claim will receive a *pro rata* share of the Settlement Fund. Here, the $35,000.00 Settlement Fund will provide a *per capita* recovery for Settlement Class Members, excluding the additional settlement benefits provided directly by CoGo's in the form of attorneys' fees, cost, and expenses. This is far superior to the *per capita* cash recoveries in other approved unfair trade practices settlements. *Oslan v. L. Offs. Of Mitchell N. Kay*, 232 F. Supp. 2d 436, 442 (E.D. Pa. 2002) (approving unfair trade practices settlement where the class award was $20,000 for 3,413 class members); *Saunders v. Berks Credit & Collections, Inc.*, No. CIV. 00-3477, 2002 WL 1497374, at *6 (E.D. Pa. July 11, 2002) (approving unfair trade practices settlements where the class awards were $12,300 and $37,500 for classes that respectively contained 1,474 and 1,579 members).

This Settlement is particularly strong in light of the risks and delay-related downsides of continued litigation. But as discussed above, the risks of continuing litigation are substantial because Plaintiffs have no assurance of establishing liability or any entitlement to monetary relief. As such, these factors weigh in favor of settlement.

3. The Complexity, Expense, and Likely Duration of the Litigation.

The complexity, expense, and duration factor "captures the probable costs, in both time and money, of continued litigation." *In re Cedant Corp. Litigation*, 264 F.3d 201, 233 (3d Cir. 2001). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *Milkman v. Am. Travellers Life Ins. Co.*, 61

Pa. D. & C.4th 502, 543 (Pa. Com. Pl. Ct. 2002) (citing *In re NASDAQ Market-Makers Antitrust Litigation*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) ("[C]lass actions have a well deserved reputation as being most complex.")).

By settling this matter now, Settlement Class Counsel and CoGo's avoid the further expenses of motions for class certification and summary judgment, preparation for trial, uncertainty of the trial outcome, and likely appeals from the judgment, all while providing a substantial and direct benefit to Settlement Class Members now as opposed to some uncertain amount at some point in the future. Thus, this factor strongly weighs in favor of settlement.

4. The State of the Proceedings and Amount of Discovery Completed.

"The purpose of the state of the proceedings and discovery completion factor is to ascertain the 'degree of case development that class counsel have accomplished prior to settlement. Through this lens, courts can determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Milkman*, 61 Pa. D. & C. 4th at 544 (quoting *In re Gen. Motors Corp. Pick Up Truck Fuel Tank Prod. Liab. Litig*., 55 F.3d 768, 813 (3d Cir. 1995)). This ensures that "a proposed settlement is the product of informed negotiations" by providing for "an inquiry into the type and amount of discovery the parties have undertaken." *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998).

Here, the Parties have been litigating this case for over five years. During that time, the Parties have briefed and argued multiple rounds of preliminary objections, engaged in extensive discovery, including written discovery as well as multiple depositions of Brian Haenze of TAG Towing. Further, the Parties ultimately reached an agreement after a series of arms'-length negotiations and multiple rounds of offers and counteroffers. As such, the Parties adequately

appreciated the merits of the case when reaching the Settlement. Thus, this factor weighs in favor of settlement.

5. The Recommendations of Competent Counsel.

"The opinion of experienced counsel is entitled to considerable weight." *Fischer v. Madway*, 485 A.2d 809, 813 (Pa. Super. Ct. 1984). Here, Settlement Class Counsel and CoGo's Counsel have negotiated this Settlement at arms'-length for months, and all Settlement Class Counsel is satisfied that this Settlement provides a more than adequate benefit to the Settlement Class and is in the best interest of the Settlement Class as it provides them with monetary relief that will reimburse them for the alleged tow fee overcharges. Thus, this factor weighs in favor of settlement.

6. The Reaction of the Class to the Settlement.

A court will inquire into the reaction of the Settlement Class in its determination of the reasonableness of the settlement. *Dauphin Deposit Bank*, 727 A.2d at 1080. This is a factor more properly addressed at final approval, after notice and an opportunity for the Settlement Class to be heard. While notice of settlement has yet to be sent out, Settlement Class Counsel is confident there will be few Settlement Class Members who will opt out or object to the Settlement as the relief provided is close in amount to both Class Members' actual damages and the minimum statutory damages amount recoverable under the UTPCPL. As such, this factor weighs in favor of preliminary approval.

In the end, the issues of law and fact have been thoroughly investigated, and continued litigation would further delay relief to the Settlement Class and consume substantial resources of both the Parties and the Court. The relief afforded by the Settlement is excellent, when balanced against the risk faced by Plaintiffs on the merits of the case, and the time, risks, and expenses of

further litigation. Nothing in the course of the settlement negotiations or the substance of the Settlement itself suggests any grounds to doubt its fairness. To the contrary, the arms-length nature of the negotiations, the participation of experienced lawyers and an able and attentive Court, as well as the value of aggregate relief support a finding that the Settlement is fair, reasonable, and more than adequate to justify notice to the Settlement Class and a hearing on final approval.

C. The Court Should Approve Notice to the Settlement Class.

Finally, as previously described, the proposed notice program should be approved. Rule 1714(c) provides that after a class has been certified, notice of any proposed settlement "shall be given to all members of the class in such manner as the court may direct." Pa. R. Civ. P. 1714(c). "Notice in a class suit must present a fair recital of the subject matter and proposed terms and inform the class members of an opportunity to be heard." *Tesauro v. Quigly Corp.*, 2002 WL 1897538, *3–4 (Pa. Com. Pl. Ct. Aug 14, 2002) (citing *Fischer v. Madway*, 485 A.2d 809, 811 (Pa. 1984)). The notice program in this case is robust, designed to reach as many individual Settlement Class Members as possible, and therefore comports with the requirements of Pa. R. Civ. P. 1712 and 1714.

As described above, the Parties propose a robust notice plan consisting of a combination of property posting and publication notice. The proposed notice program is necessary in light of TAG Towing's failure to preserve its tow records during the pendency of this litigation. Courts have often approved similar notice plans where reasonable effort would not suffice to identify class members. *See, e.g.*, *Hughes v. Kore of Indiana Enter., Inc.*, 731 F.3d 672, 677 (7th Cir. 2013) (finding a combination of publication notice and property notice practical because of the difficulty in identifying members of a class comprised of persons who had used two ATM machines); *In re Motor Fuel Temperature Sales Pracs. Litig.*, 279 F.R.D. 598, 617–18 (D. Kan. 2012) (approving

publication notice in newspapers where individual members of the class—comprised of current state residents who purchased motor fuel from a particular gas station—could not be identified). As such, Settlement Class Members will be provided notice through means reasonably calculated to inform them of the Settlement.

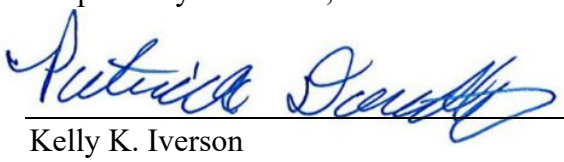
Further, the Settlement Notice includes a description of the material terms of the Settlement and the forms of relief available to Settlement Class Members; a date by which Settlement Class Members may object to or opt out of the Settlement; the date upon which the Final Approval Hearing will occur; and the address of the Settlement Website at which Settlement Class Members can access the Settlement Agreement, Claim Form, and other related documents and information. (*See* SA Ex. 4, 5, & 6). This notice program meets or exceeds all requirements under Pennsylvania law and satisfies all constitutional considerations of fairness and due process. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 70, 314–315 (1950) ("[N]otice must be the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'")); Pa. R. Civ. P. 1712(b) (permitting a combination of direct individual notice and publication notice reasonably calculated to inform members of the class of the pendency of the action).

III. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court grant their motion and enter the proposed order preliminarily approving the Settlement, conditionally certifying the Settlement Class for settlement purposes, and authorizing Settlement Notice to be sent to Settlement Class Members.

Dated: April 26, 2024

Respectfully submitted,



Kelly K. Iverson
(Pa. ID No. 307175)
Elizabeth Pollock-Avery
(Pa. ID No. 314841)
Patrick D. Donathen
(Pa. ID No. 330416)
LYNCH CARPENTER LLP
1133 Penn Ave., 5th Floor
Pittsburgh PA, 15222
P: 412.322.9243
Kelly@lcllp.com
Elizabeth@lcllp.com

Joshua P. Ward
(Pa. ID No. 320347)
J.P. WARD & ASSOCIATES, LLC
201 S. Highland Ave, #201
Pittsburgh, PA 15206
P: 412.545.3016
jward@jpward.com

Attorneys for Plaintiffs and the Proposed Settlement Class

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, the foregoing was served by email and/or mail on the following:

Vincent M. Roskovensky
Clark Hill PC
One Oxford Centre, 14th Floor
Pittsburgh, PA 15219
vroskovensky@clarkhill.com

Counsel for Cogo's Co.

Brian Haenze
5945 Buttermilk Hollow Road
Pittsburgh, PA 15207

Owner/Operator of Auto Gallery and Accessories and Tag Towing and Collision

Patrick D. Donathen